

**OPINION  
45-18**

June 13, 1945            (OPINION)

ALCOHOLIC BEVERAGES

RE:    LICENSES - Maximum Fees

This will acknowledge the receipt of your letter dated June 11, 1945, wherein you request the opinion of this office in answer to the following questions:

1.    Is it compulsory for the governing body of a city or village to issue a liquor license to any applicant?
2.    What is the limit of a fee for a city liquor license?

In answer to your first question, it is my opinion that it is not compulsory for the governing body of a city or village to issue a liquor license to anyone who applies for it.

Section 5-0207 of the North Dakota revised code of 1943, relating to the sale of beer, reads:

"The governing body of each incorporated city and village shall have the following powers:

1.    To require licenses for retailers of beer or ale in such city or village;
2.    To license and to deny and revoke licenses for cause;
3.    To regulate the business of vendors at retail of beer or ale authorized to be sold by this chapter in their respective jurisdictions, subject to review by the courts;
4.    To impose and collect license fees; and
5.    To provide for the punishment of any violation of any such regulations.

Such regulations shall be uniform in their application to all persons within such city or village, and all applicants for license who are qualified under section 5-0202, shall be granted licenses by any municipality."

Section 40-0501 of the revised code provides:

"The governing body of a municipality shall have the power to regulate the use and to regulate and license the sale of alcoholic beverages subject to the provisions contained in the title 'Alcoholic Beverages.'"

And section 5-0320 of the revised code provides:

"The governing body of any city, village, or county may revoke

licenses for cause and may regulate the retail sale of liquor within its jurisdiction, subject to review by the courts of the state."

It is my opinion that the governing body of a municipality may, by ordinance, limit the number of places where alcoholic beverages may be sold. It naturally follows that the number of licenses issued will be limited to the number of places where liquor may be sold. For it has been even held by the supreme courts of several states that "legislative powers of a city council to license, regulate, and tax, carries with it a wide discretion as to the person and places to be licensed and the number of licenses to be granted, which discretion may be exercised in each case when an application is made, if the matter has not been regulated by general ordinance." 30 Am. Jur., sec. 121, page 320.

The supreme court of this state (N.D.) has held that the retail liquor traffic is generally deemed subject not only to state but local regulation. Thielen v. Kostelecky, 69 N.D. 410, 124 A.L. R. 820.

In answer to your second question, I beg to advise you that section 5-0303 of the revised code for 1943 provides that the local retail license fee for the sale of liquor (alcoholic beverages containing more than 4 percent of alcohol by weight) shall not be less than \$200.00 nor more than \$1000.00.

The license fee for the sale of beer rests within the discretion of the governing body of a municipality. Such license fee should, of course, be fixed by ordinance.

NELS G. JOHNSON

Attorney General